IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 378 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JYOTSNABEN P KOTICHA MAHAVIR PETROLEUM

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 378 of 2001

MR ND NANAVATI with MR TUSHAR MEHTA for Petitioner No. 1

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 03/09/2001

ORAL JUDGEMENT

#. This revision is directed against the order of Additional Sessions Judge, i.e. the Special Sessions Judge (Essential Commodities Act,) Rajkot passed on 11.7.2001 rejecting the application of the petitioner for

the possession of muddamal truck bearing No.GTX/4202 which was seized by the Investigating Agency at Vankaner Taluka Police Station in C.R.No.3026/2000 registered against the present petitioner under Sections 3 and 7 of the Essential Commodities Act.

#. Heard learned advocate for the petitioner Mr.N.D.Nanavati, learned APP B.Y.Mankad, for the respondent.

#. The learned trial Judge dismissed the application on the ground that the tanker seized as muddamal was filled in with the solvent and when the muddamal tanker was seized alongwith the solvent it was not in the interest of justice to hand over the possession of the said tanker to the applicant.

#. It was argued that the said muddamal tanker is the only means for the present petitioner for the livelihood of the family and that the transportation of solvent in a tanker was not an offence. The tanker in question be handed over to the present petitioner after extracting out the solvent from the tanker on any conditions which this Court may impose. It was urged that the petitioner does not claim solvent and will afford all the facilities to extract the solvent from the tanker and for the storage of the same till the muddamal of the solvent is disposed of by the competent Court.

#. In this view of the matter, having regard to the rival contentions, it appears that after extracting solvent from the tanker the muddamal tanker can be handed over to the petitioner, sufficient care though is required to be taken for unloading the solvent from the tanker and, therefore, in the interest of justice following order is passed.

#. The trial Court (Special Judge Essential Commodities Act, Rajkot) is directed to appoint a Commissioner and shall fix remuneration which will be deposited by the present petitioner in the Court to supervise the unloading of solvent from the tanker in the presence of such Commissioner appointed by the Court and the Investigating Agency. The Investigating Agency shall unload the solvent in barrels provided by the petitioner and those barrels, shall be stored as muddamal of the case. The present petitioner shall assist in unloading solvent from the tanker whenever he is required to do so by the Commissioner or Investigating Agency. After unloading the solvent from the tanker as aforesaid the muddamal tanker bearing No.GTX-4202 shall be handed over

to the petitioner pending trial on depositing an amount of Rs.20,000/- in cash and a surety of Rs.2,50,000/- and a personal bond of the like amount on the following conditions:-

(1) That the petitioner shall keep the vehicle in good condition.

(2) That the petitioner shall not sell or otherwise transfer the vehicle in question in any manner whatsoever without the permission of the trial Court.

(3) That the petitioner shall ensure that the vehicle does not get involved in any illegal activities and more particularly in transporting contraband solvent.

(4) That the petitioner shall produce the vehicle and other documents before the Investigating Agency w Investigating Agency is required to do so.

#. In this view of the matter, the order impugned is set aside. Revision Application is allowed. Rule is made absolute to the aforesaid extent. D.S. is permitted.

(J. R. VORA, J.)

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